रजिस्ट्री सं. डी-(डी)-72 REGISTERED No. D-(D)-72

भारत का राजपत्र
The Gazette of India

असाधारण
EXTRAORDINARY
भाग II—खण्ड 2
PART II—Section 2
प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं० 30] नई दिल्ली, शनिवार, मई 18, 1985/वैशाख 28, 1907
No. 30] NEW DELHI, SATURDAY, MAY 18, 1985/VAISAKHA 28, 1907

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation

LOK SABHA

The following Bills were introduced in Lok Sabha on the 18th May, 1985:—

BILL No. 118 OF 1985

A Bill to make special provisions for the prevention of, and for coping with, terrorist and disruptive activities and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Thirty-sixth Year of the Republic of India as follows:—

PART I

PRELIMINARY

1. (*1*) This Act may be called the Terrorist and Disruptive Activities (Prevention) Act, 1985. Short title, extent, application, commencement, duration and savings.

(2) It extends to the whole of India, and it applies also—

(*a*) to citizens of India outside India;

(*b*) to persons in the service of the Government, wherever they may be; and

(*c*) to persons on ships and aircraft registered in India, wherever they may be.

Provided that so much of this Act as relates to terrorist acts shall not apply to the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, notification in the Official Gazette, appoint and shall remain in force for a period of two years from the date of its commencement, but its expiry under the operation of this sub-section shall not affect—

(a) the previous operation of, or anything duly done or suffered under, this Act or any rule made thereunder or any order made under any such rule, or

(b) any right, privilege, obligation or liability acquired, accrued or incurred under this Act or any rule made thereunder or any order made under any such rule, or

(c) any penalty, forfeiture or punishment incurred in respect of any offence under this Act or any contravention of any rule made under this Act or of any order made under any such rule, or

(d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid,

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if this Act had not expired.

Definitions.

2. (1) In this Act, unless the context otherwise requires,—

(a) "Code" means the Code of Criminal Procedure, 1973; 2 of 1974.

(b) "Designated Court" means a Designated Court constituted under section 7;

(c) "disruptive activity" has the meaning assigned to it in section 4, and the expression "disruptionist" shall be construed accordingly;

(d) "High Court", in relation to a Designated Court, means the High Court within the territorial limits of whose jurisdiction such Designated Court is proposed to be, or is, constituted;

(e) "Public Prosecutor" means a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor appointed under section 11, and includes any person acting under the directions of the Public Prosecutor;

(f) "terrorist act" has the meaning assigned to it in sub-section (1) of section 3 and the expression "terrorist" shall be construed accordingly;

(g) words and expressions used but not defined in this Act and defined in the Code shall have the meanings respectively assigned to them in the Code.

(2) Any reference in this Act to any enactment or any provision thereof shall, in relation to an area in which such enactment or such provision is not in force, be construed as a reference to the corresponding law or the relevant provision of the corresponding law, if any, in force in that area.

PART II

PUNISHMENTS FOR, AND MEASURES FOR COPING WITH, TERRORIST AND DISRUPTIVE ACTIVITIES

Punishment for terrorist state:

3. (1) Whoever with intent to overawe the Government as by law established or to strike terror in the people or any section of the people or to alienate any section of the people or to adversely affect the harmony amongst different sections of the people does any act or thing by using bombs,

dynamite or other explosive substances or inflammable substance or fire-arms or other lethal weapons or poisons or noxious gases or other chemicals or any other substances (whether biological or othewise) of a hazardous nature in such a manner as to cause, or as is likely to cause, death of, or injuries to, any person or persons or damage to, or destruction of, property or disruption of any supplies or services essential to the life of the commuity, commits a terrorist act.

(*2*) Whoever commits a terrorist act shall,—

(*i*) if such act has resulted in the death of any person, be punishable with death;

(*ii*) in any other case, be punishable with imprisonment for a term which shall not be less than five years but which may extend to term of life and shall also be liable to fine.

(*3*) Whoever conspires or attempts to commit, or advocates, abets advises or incites or knowingly facilitates the commission of, a terrorist act or any act preparatory to a terrorist act, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to term of life and shall also be liable to fine.

Punishment for disruptive activities.

4. (*1*) Whoever commits or conspires or attempts to commit or abets, advocates, advises, incites or knowingly facilitates the commission of, any disruptive activity or any act preparatory to a disruptive activity shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to term of life and shall also be liable to fine.

(*2*) For the purposes of sub-section (*1*), "disruptive activity" means any action taken, whether by act or by speech or song or ballad or verse or words or by any book, pamphlet, paper, writing, record, tape video cassette, drawing, painting, representation or in any other manner whatsoever,—

(*i*) which questions, disrupts or is intended to disrupt, whether directly or indirectly, the sovereingty and territorial integrity of India; or

(*ii*) which is intended to bring about or supports any claim, whether directly or indirectly, for the cession of any part of India or the secession of any part of India from the Union.

Explanation.—For the purposes of this sub-section,—

(*a*) "cession" includes the admission of any claim of any foreign country to any part of India, and

(*b*) "secession" includes the assertion of any claim to determine whether a part of India will remain within the Union.

(*3*) Without prejudice to the generality of the provisions of sub-section (*2*), it is hereby declared that any action taken, whether by act or by speech or song or balled or verse or words or by any book, pamphlet, paper writing, record, tape video cassette, drawing, painting, representation or in any other manner whatsoever which—

(*a*) advocates, advises, suggests or incites; or

(*b*) predicts, prophesies or pronounces or otherwise expresses, in such manner as to incite, advise, suggest or prompt,

the killing or the destruction of any persons bound by oath under the Constitution to uphold the sovereignty and integrity of India or any public servants shall be deemed to be a disruptive activity within the meaning of this section.

Power to make rules.

5. (*1*) The Central Government may, by notification in the Official Gazette, make such rules as appear to it necessary or expedient for the prevention of, and for coping with, terrorist acts and disruptive activities.

(*2*) Without prejudice to the generality of the powers conferred by sub-section (*1*), the rules may provide for, and may empower any authority to make orders providing for, all or any of the following matters with respect to the purposes mentioned in that sub-section, namely:—

(*a*) preventing or prohibiting anything likely to facilitate the commission of terrorist acts or disruptive activities or prejudice the successful conduct of operations against terrorists or disruptionists including—

(*i*) communications with persons (whether within or outside India) instigating or abetting terrorist acts or disruptive activities or assisting in any manner terrorists or disruptionists;

(*ii*) acquisition, possession or publication, without lawful authority or excuse of information likely to assist terrorists or disruptionists;

(*iii*) rendering of any assistance, whether financial or otherwise, to terrorists or disruptionists;

(*b*) preventing, with a view to coping with terrorist acts or disruptive activities, the spread without lawful authority or excuse, of reports or the prosecution of any purpose likely to cause disaffection or alarm or to prejudice maintenance of peaceful conditions in any area or part of India or to promote feelings of ill-will, enmity or hatred between different classes of the people of India;

(*c*) regulating the conduct of persons in respect of areas the control of which is considered necessary or expedient and the removal of such persons from such areas;

(*d*) requiring any person or class of persons to comply with any scheme for the prevention of, or for coping with, terrorist acts or disruptive activities;

(*e*) ensuring the safety of persons and property;

(*f*) the demolition, destruction or rendering useless, in case of necessity, of any building or other premises or any other property;

(*g*) prohibiting or regulating in any area traffic and the use of any vehicles or vessels or signals or any apparatus whatsoever;

(*h*) the control of movements within India of persons arriving in India from outside India;

(*i*) prohibiting or regulating the use of postal, telegraphic or telephonic services, including taking possession of such services, and the delaying, seizing, intercepting or interrupting of postal articles or telegraphic or telephonic messages;

(*j*) regulating the delivery, otherwise than by postal or telegraphic service, of postal articles and telegrams;

(*k*) regulating supplies and services essential to the life of the community;

(*l*) the requisitioning of services of persons for maintaining supplies and services essential to the life of the community;

(*m*) the provision, construction, maintenance or alteration of buildings, premises or other structures or excavations required for the conduct of operations against terrorists or disruptionists;

(*n*) prohibiting or regulating the possession, use or disposal of—

(*i*) explosives, inflammable substances, corrosive and dangerous articles, arms and ammunitions;

(*ii*) vehicles and vessels;

(*iii*) wireless telegraphic apparatus;

(*iv*) photographic and signalling apparatus, or any means of recording or communicating information;

(*o*) preventing the disclosure of official secrets;

(*p*) prohibiting or regulating meetings, assemblies, fairs and processions;

(*q*) preventing or controlling any use of uniforms, whether official or otherwise, flags, official decorations like medals, badges and other insignia and anything similar thereto, where such use is calculated to deceive;

(*r*) ensuring the accuracy of any report or declaration legally required of any person;

(*s*) preventing anything likely to cause misapprehension in respect of the identity of any official person, official document or official property or in respect of the identity of any person, document or property purported to be or resembling an official person, official document or official property;

(*t*) the entry into, and search of, any place whatsoever reasonably suspected of being used for harbouring terrorists or disruptionists or for manufacturing or storing anything for use for purpose of terrorist acts or disruptive activities.

(3) The rules made under sub-section (1) may further—

(*a*) provide for the arrest and trial of persons contravening any of the rules or any order issued thereunder;

(*b*) provide that any contravention of, or any attempt to contravene, or any abetment of, or any attempt to abet the contravention of any of the provisions of the rules or any order issued under any such provision, shall be punishable with imprisonment for a term which may extend to seven years or for a term which may not be less than six months but which may extend to seven years or with fine or with imprisonment as aforesaid and fine;

(*c*) provide for the seizure, detention and forfeiture of any property in respect of which such contravention, attempt or abetment as is referred to in clause (*b*) has been committed and for the adjudication of such seizure and forfeiture, whether by any court or by any other authority;

(*d*) confer powers and impose duties as respects any matter upon the Central Government or officers and authorities of the Central Government or upon any State Government or officers and authorities of the State Government;

(*e*) prescribe the duties and powers of public servants and other persons as regards preventing the contravention of, or securing the observance of, the rules or any order made thereunder;

(*f*) provide for preventing contravention, obstruction and deception of, and disobedience to, any person acting, and interference with any notice issued, in pursuance of the rules or any order made thereunder;

(*g*) prohibit attempts by any person to screen from punishment any one, other than the husband or wife of such person, contravening any of the rules or any order made thereunder;

(*h*) empower or direct any authority to take such action as may be specified in the rules or as may seem to such authority necessary for the purpose of ensuring the safety of persons and of property.

Enhanced penalties.

6. (*1*) If any person contravenes, in any area notified in this behalf by a State Government, any such provision of, or any such rule made under, the Arms Act, 1959, the Explosives Act, 1884, the Explosive Substances Act, 1908, or the Inflammable Substances Act, 1952, as may be notified in this behalf by the Central Government or by a State Government, he shall, notwithstanding anything contained in any of the aforesaid Acts or the rules made thereunder, be punishable with imprisonment for a term which may extend to ten years or, if his intention is to aid any terrorist or disruptionist, with death or imprisonment for a term which shall not be less than three years but which may extend to term of life, and shall also be liable to fine.

54 of 1959.
4 of 1884.
5 of 1908.
20 of 1952.

(*2*) For the purposes of this section, any person who attempts to contravene or abets, or attempts to abet, or does any act preparatory to the contravention of any provision of any law, rule or order shall be deemed to have contravened that provision.

PART III

DESIGNATED COURTS

Designated Courts.

7. (*1*) **The State Government may for the whole or any part of the State constitute one or more Designated Courts.**

(*2*) **A Designated Court shall be presided over by a judge to be appointed by the State Government with the concurrence of the Chief Justice of the High Court.**

(*3*) **The State Government may also appoint, with the concurrence of the Chief Justice of the High Court, additional judges to exercise jurisdiction in a Designated Court.**

(*4*) **A person shall not be qualified for appointment as a judge or an additional judge of a Designated Court unless he is, immediately before such appointment, a sessions judge or an additional sessions judge in any State.**

(5) For the removal of doubts, it is hereby provided that the attainment by a person appointed as a judge or an additional judge of a Designated Court of the age of superannuation under the rules applicable ti him in the Service to which he belongs, shall not affect his continuance as such judge or additional judge.

(6) Where any additional judge or additional judges is or are appointed in a Designated Court, the judge of the Designated Court may, from time to time, by general or special order, in writing, provide for the distribution of business of the Designated Court among himself and the additional judge or additional judges and also for the disposal of urgent business in the event of his absence or the absence of any additional judge.

Place of sitting.

8. A Designated Court may, if it considers it expedient or desirable so to do, sit for any of its proceedings at any place, other than the ordinary place of its sitting, in the State in which it is constituted:

Provided that if the Public Prosecutor certifies to the Designated Court that it is in his opinion necessary for the protection of the accused or any witness or otherwise expedient in the interests of justice that the whole or any part of the trial should be held at some place other than the ordinary place of its sitting, the Designated Court may, after hearing the accused make an order to that effect unless, for reasons to be recorded in writing, the Designated Court thinks fit to make any other order.

Jurisdiction of Designated Courts.

9. (1) Notwithstanding anything contained in the Code, every offence punishable under any provision of this Act or any rule made thereunder shall be triable only by the Designated Court within whose local jurisdiction it was committed.

(2) The Central Government may, if satisfied on the recommendation of the State Government or otherwise that it is necessary or expedient in the public interest so to do, transfer with the concurrence of the Chief Justice of India (such concurrence to be obtained on a motion moved in that behalf by the Attorney-General of India) any case pending before a Designated Court in that State to a Designated Court in any other State.

(3) Where the whole or any part of the area within the local limits of the jurisdiction of a Designated Court has been declared to be, or forms part of, any area which has been declared to be a disturbed area under any enactment for the time being in force making provision for the suppression of disorder and restoration and maintenance of public order, and the Central Government is of opinion, whether on receipt of a report received from the Government of the State in which such court is located or otherwise, that the situation prevailing in the State is not conducive to fair, impartial or speedy trial within the State, of offences under this Act or the rules made thereunder which such court is competent to try, the Central Government may, with the concurrence of the Chief Justice of India, specify, by notification in the Official Gazette, in relation to such court (hereafter in this sub-section referred to as the local court) a Designated Court outside the State (hereafter in this section referred to as the specified court), and thereupon—

(*a*) it shall not be competent, at any time during the period of operation of such notification, for such local court to exercise any jurisdiction in respect of, or try, any offence under this Act or the rules thereunder;

(*b*) the jurisdiction which would have been, but for the issue of such notification, exercisable by such local court in respect of such offences committed during the period of operation of such notification shall be exercisable by the specified court;

(*c*) all cases relating to such offences pending immediately before the date of issue of such notification before such local court shall stand transferred on that date to the specified court;

(*d*) all cases taken cognizance of by, or transferred to, the specified court under clause (*b*) or clause (*c*) shall be dealt with and tried in accordance with this Act (whether during the period of operation of such notification or thereafter) as if such offences had been committed within the local limits of the jurisdiction of the specified court or, as the case may be, transferred for trial to it under sub-section (*2*).

Explanation.—A notification issued under this sub-section in relation to any local court shall cease to operate on the date on which the whole or, as the case may be, the aforementioned part of the area within the local limits of its jurisdiction, ceases to be a disturbed area.

Power of Designated Courts with respect to other offences.

10. (*1*) When trying any offence a Designated Court may also try any other offence with which the accused may, under the Code, be charged at the same trial if the offence is connected with such other offence.

(*2*) If, in the course of any trial under this Act of any offence, it is found that the accused person has committed any other offence under this Act or any rule thereunder or under any other law, the Designated Court may convict such person of such other offence and pass any sentence authorised by this Act or such rule or, as the case may be, such other law, for the punishment thereof.

Public Prosecutors.

11.(1) For every Designated Court the State Government shall appoint a person to be the Public Prosecutor and may appoint one or more persons to be the Additional Public Prosecutor or Additional Public Prosecutors:

Provided that the State Government may also appoint for any case or class of cases a Special Public Prosecutor.

(*2*) A person shall be eligible to be appointed as a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor under this section only if he has been in practice as an Advocate for not less than seven years or has held any post, for a period of not less than seven years, under the Union or a State, requiring special knowledge of law.

(*3*) Every person appointed as a Public Prosecutor or an Additional Public Prosecutor or a Special Public Prosecutor under this section hall be deemed to be a Public Prosecutor within the meaning of clause (*u*) of section 2 of the Code, and the provisions of the Code shall have effect accordingly.

Procedure and powers of Designated Courts.

12. (*1*) A Designated Court may take cognizance of any offence, without the accused being committed to it for trial, upon receiving a complaint of facts which constitute such offence or upon a police report of such facts.

(2) Where an offence triable by a Designated Court is punishable with imprisonment for a term not exceeding three years or with fine or with both, the Designated Court may, notwithstanding anything contained in

sub-section (*1*) of section 260 or section 262 of the Code, try the offence in a summary way in accordance with the procedure prescribed in the Code and the provisions of sections 263 to 265 of the Code, shall, so far as may be, apply to such trial:

Provided that when, in the course of a summary trial under this sub-section, it appears to the Designated Court that the nature of the case is such that it is undesirable to try it in a summary way, the Designated Court shall recall any witnesses who may have been examined and proceed to re-hear the case in the manner provided by the provisions of the Code for the trial of such offence and the said provisions shall apply to and in relation to a Designated Court as they apply to and in relation to a Magistrate:

Provided further that in the case of any conviction in a summary trial under this section, it shall be lawful for a Designated Court to pass a sentence of imprisonment for a term not exceeding two years.

(*3*) A Designated Court may, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, an offence, tender a pardon to such person on condition of his making a full and true disclosure of the whole circumstances within his knowledge relative to the offence and to every other person concerned whether as principal or abettor in the commission thereof, and any pardon so tendered shall, for the purposes of section 308 of the Code, be deemed to have been tendered under section 307 thereof.

(*4*) Subject to the other provisions of this Act, a Designated Court shall, for the purpose of trial of any offence, have all the powers of a Court of Session and shall try such offence as if it were a Court of Session so far as may be in accordance with the procedure prescribed in the Code for the trial before a Court of Session.

(*5*) Subject to the other provisions of this Act, every case transferred to a Designated Court under sub-section (*2*) of section 9 shall be dealt with as if such case had been transferred under section 406 of the Code to such Designated Court.

Protection of witnesses.

13. (*1*) Notwithstanding anything contained in the Code, all proceedings before a Designated Court shall be conducted *in camera*:

Provided that where the Public Prosecutor so applies, any proceedings or part thereof may be held in open court.

(*2*) A Designated Court may, on an application made by a witness in any proceedings before it or by the Public Prosecutor in relation to such witness or on its own motion, take such measures as it deems fit for keeping the identity and address of the witness secret.

(*3*) In particular and without prejudice to the generality of the provisions of sub-section (*2*), the measures which a Designated Court may take under that sub-section may include—

(*a*) the holding of the proceedings at a protected place;

(*b*) the avoiding of the mention of the names and addresses of the witnesses in its orders or judgments or in any records of the case accessible to public;

(c) the issuing of any directions for securing that the identity and addresses of the witnesses are not disclosed.

(4) Any person who contravenes any direction issued under sub-section (3) shall be punishable with imprisonment for a term which may extend to one year and with fine which may extend to one thousand rupees.

Trial by Designated Courts to have precedence.

14. The trial under this Act of any offence by a Designated Court shall have precedence over the trial of any other case against the accused in any other court (not being a Designated Court) and shall be concluded in preference to the trial of such other case and accordingly the trial of such other case shall remain in abeyance.

Power to transfer cases to regular courts.

15. Where after taking cognizance of any offence, a Designated Court is of opinion that the offence is not triable by it, it shall, notwithstanding that it has no jurisdiction to try such offence transfer the case for trial of such offence to any court having jurisdiction under the Code and the court to which the case is transferred may proceed with the trial of the offence as if it had taken cognizance of the offence.

Appeal.

16. (1) Notwithstanding anything contained in the Code, an appeal shall lie as a matter of right from any judgment, sentence or order, not being an interlocutory order, of a Designated Court to the Supreme Court both on facts and on law.

(2) Except as aforesaid, no appeal or revision shall lie to any court from any judgment, sentence or order of a Designated Court.

(3) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment, sentence or order appealed from:

Provided that the Supreme Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days.

PART IV

MISCELLANEOUS

Modified application of certain provisions of the Code.

17. (1) Notwithstanding anything contained in the Code or any other law, every offence punishable under this Act or any rule made thereunder shall be deemed to be a cognizable offence within the meaning of clause (c) of section 2 of the Code and "cognizable case" as defined in that clause shall be construed accordingly.

(2) Section 167 of the Code shall apply in relation to a case involving an offence punishable under this Act or any rule made thereunder subject to the modifications that—

(a) the reference in sub-section (1) thereof to "Judicial Magistrate" shall be construed as a reference to "Judicial Magistrate or Executive Magistrate";

(*b*) the references in sub-section (*2*) thereof to "fifteen days", "ninety days" and "sixty days", wherever they occur, shall be construed as references to "sixty days", "one year" and "one year", respectively; and

(*c*) sub-section (*2A*) thereof shall be deemed to have been omitted.

(*3*) Sections 366 to 371 and section 392 of the Code shall apply in relation to a case involving an offence trible by a Designated Court subject to the modifications that the references to "Court of Session" and "High Court", wherever occurring therein, shall be construed as references to "Designated Court" and "Supreme Court", respectively.

(*4*) Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence punishable under this Act or any rule made thereunder.

(*5*) Notwithstanding anything contained in the Code, no person accused of an offence punishable under this Act or any rule made thereunder shall, if in custody, be released on bail or on his own bond unless—

(*a*) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(*b*) Where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(*6*) The limitations on granting of bail specified in sub-section (*5*) are in addition to the limitations under the Code or any other law for the time being in force on granting of bail.

Competence of Central Government to exercise powers of State Government and delegation of powers.

18. (*1*) Any power exercisable by a State Government under this Act may be exercised by the Central Government with the same effect as if such power had been conferred directly on the Central Government and had been delegated by that Government to such State Government.

(*2*) The Central Government may, by notification in the Official Gazette direct that any power or duty which by this Act or by any rule made under this Act is conferred or imposed on the Central Government shall, in such circumsstances and under such conditions, if any, as may be specified in the direction, be exercised or discharged also—

(*a*) by any officer or authority subordinate to the Central Government, or

(b) by any State Government or by any officer or authority subordinate to the State Government, or

(*c*) by any other authority.

(*3*) The State Government may, by notification in the Official Gazette, direct that any power which by this Act or by any rule made under this Act is conferred or imposed on the State Government or which being by this Act or any such rule conferred or imposed on the Central

Government has been directed under sub-section (2) to be exercised or discharged by the State Government shall, in such circumstances and under such conditions, if any, as may be specified in the direction, be exercised or discharged by any officer or authority subordinate to the State Government.

Power of the Supreme Court to make rules.

19. The Supreme Court may, by notification in the Official Gazette, make such rules, if any, as it may deem necessary for carrying out the provisions of this Act relating to Designated Courts.

Saving.

20. (1) Nothing in this Act shall affect the jurisdiction exercisable by, or the procedure applicable to, any court or other authority under any law relating to the naval, military or air forces or other armed forces of the Union.

(2) For the removal of doubts, it is hereby declared that for the purposes of any such law as is referred to in sub-section (1), a Designated Court shall be deemed to be a court of ordinary criminal justice.

Rules to be laid before Houses of Parliament.

21. Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Overriding effect.

22. The provisions of this Act or any rule made thereunder or any order made under any such rule shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act.

Saving as to orders.

23. Where an order purports to have been made and signed by any authority in exercise of any power conferred by or under this Act, a court shall, within the meaning of the Indian Evidence Act, 1872, presume that such order was so made by that authority. 1 of 1872.

Protection of action taken under the Act.

24. No suit, prosecution or other legal proceeding shall lie against the Central Government or a State Government or any officer or authority of the Central Government or State Government or any other authority to whom powers have been delegated under this Act for anything which is in good faith done or intended to be done in pursuance of this Act or any rules made thereunder or any order issued under any such rule.

STATEMENT OF OBJECTS AND REASONS

Terrorists had been indulging in wanton killings, arson, looting of properties and other heinous crimes mostly in Punjab and Chandigarh. Since the 10th May, 1985, the terrorists have expanded their activities to other parts of the country, i.e., Delhi, Haryana, Uttar Pradesh and Rajasthan as a result of which several innocent lives have been lost and many suffered serious injuries. In planting of explosive devices in trains, buses and public places, the object to terrorise, to create fear and panic in the minds of citizens and to disrupt communal peace and harmony is clearly discernible. This is a new and overt phase of terrorism which requires to be taken serious note of and dealt with effectively and expeditiously. The alarming increase in disruptive activities is also a matter of serious concern.

2. The Bill seeks to make provision for combating the menace of terrorists and disruptionists. It seeks, *inter alia*, to—

(*a*) provide for deterrent punishments for terrorist acts and disruptive activities;

(*b*) confer on the Central Government adequate powers to make such rules as may be necessary or expedient for the prevention of and for coping with, terrorist acts and disruptive activities; and

(*c*) provide for the constitution of Designated Courts for the speedy and expeditious trial of offences under the proposed legislation.

3. The Bill seeks to achieve the above objects.

NEW DELHI;
The 17th May, 1985.

A. K. SEN.

FINANCIAL MEMORANDUM

Clause 7 of the Bill provides for the constitution of Designated Courts by the State Governments and also for the appointments of the Judges and Additional Judges of those Courts. Clause 11 of the Bill provides for the appointments of the Public Prosecutors, Additional Public Prosecutors and Special Public Prosecutors by the State Governments.

2. The expenditures towards setting up of the Designated Courts and towards salaries and allowances of the Judges, Public Prosecutors and staff will be defrayed out of the Consolidated Funds of the States. The expenditure towards setting up of the Designated Courts in the Union territories will be defrayed out of the Consolidated Fund of India. The likely expenditure for each Designated Court and on the salaries and allowances of the Judges, Public Prosecutors, Additional Public Prosecutors, staff, etc., over a period of six months is expected to be about rupees 3.57 lakhs, out of which rupees 1.72 lakhs will be of a recurring nature and rupees 1.85 lakhs of a non-recurring nature. As it is not possible at this stage to visualise the number of such Courts that may have to be established, it is not possible to give an estimate of the actual expenditure that may have to be incurred in this behalf.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 5 of the Bill seeks to empower the Central Government to make such rules as appear to it necessary or expedient for the prevention of and for coping with terrorist and disruptive activities. The particular matters in respect of which such rules may be made have been specified in sub-clause (2) of the clause. The rule making power under the clause is of sufficient amplitude to enable the Central Government to provide for stringent punishment within the limits specified in sub-clause (3) of clause 5 for contraventions of the rules and for other matters connected with such contraventions. The situations which arise as a result of terrorist and disruptive activities are of a very grave nature. Further, it is not possible to visualise the various types of situations which terrorists and disruptionists may create.

2. Sub-clause (2) of clause 18 of the Bill provides for the delegation by the Central Government of its powers and duties under the legislation to officers and the authorities subordinate to the Central Government and to State Governments and officers or authorities subordinate to State Governments as also to other authorities. Sub-clause (3) of clause 18 seeks to confer power on a State Government to delegate the powers conferred on it by the legislation to its officers and authorities. The sub-clause also provides for sub-delegation by a State Government to its officers and authorities of the powers delegated to it by the Central Government. Provisions for delegation and sub-delegation on the lines provided in sub-clause (2) of clause 18 are necesary for securing effective administration of the legislation.

3. Clause 19 of the Bill seeks to empower the Supreme Court to frame such rules, if any, as it may deem necessary for carrying out the purposes of the Bill relating to Designated Courts. The matters in respect of which the Supreme Court can make rules would relate to matters of detail or procedure. The power is sought to be conferred on the Supreme Court to enable it to provide for contingencies which it is not practicable to visualise and thereby secure the effective functioning of the Designated Court.

4. In the context of the circumstances as explained above, the delegation of legislative power involved is of a normal character.

BILL NO. 117 OF 1985

A Bill further to amend the Securities Contracts (Regulation) Act, 1956.

BE it enacted by Parliament in the Thirty-sixth Year of the Republic of India as follows:—

Short title and commencement.

1. (*1*) This Act may be called the Securities Contracts (Regulation) Amendment Act, 1985.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Insertion of new section 22A.

2. In the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as the principal Act), after section 22, the following section shall be inserted, namely:— 42 of 1956.

Free transferability and registration of transfers of listed securities of companies.

'22A. (*1*) **In this section, unless the context otherwise require:—**

(*a*) **"company" means a company whose securities are listed on a recognised stock exchange;**

(*b*) **"security" means security of a company, being a security listed on a recognised stock exchange but not being a security which is not fully paid up or on which the company has a lien;**

(*c*) **all other words and expressions used in this section and not defined in this Act but defined in the Companies Act, 1956 shall have the same meanings as are assigned to them in that Act.** 1 of 1956.

(2) Subject to the provisions of this section, securities of companies shall be freely transferable.

(3) Notwithstanding anything contained in its articles or in section 82 or section 111 of the Companies Act, 1956, but subject to the other provisions of this section, a company may refuse to register the transfer of any of its securities in the name of the transferee on any one or more of the following grounds and on no other ground, namely:— 1 of 1956.

(a) that the instrument of transfer is not proper or has not been duly stamped and executed or that the certificate relating to the security has not been delivered to the company or that any other requirement under the law relating to registration of such transfer has not been complied with;

(b) that the transfer of the security is in contravention of any law;

(c) that the transfer of the security is likely to result in such change in the composition of the Board of Directors as would be prejudicial to the interests of the company or to the public interest;

(d) that the transfer of the security is prohibited by any order of any court, tribunal or other authority under any law for the time being in force.

(4) A company shall, before the expiry of two months from the date on which the instrument of transfer of any of its securities is lodged with it for the purposes of registration of such transfer, not only form, in good faith, its opinion as to whether such registration ought not or ought to be refused on any of the grounds mentioned in sub-section (3) but also—

(a) if it has formed the opinion that such registration ought not to be so refused, effect such registration;

(b) if it has formed the opinion that such registration ought to be refused on the ground mentioned in clause (a) of sub-section (3), intimate the transferor and the transferee by notice in the prescribed form about the repuirements under the law which has or which have to be complied with for securing such registration;

(c) in any other case, make a reference to the Company Law Board and forward copies of such reference to the transferor and the transferee.

(5) Every reference under clause (c) of sub-section (4) shall be in the prescribed form and contain the prescribed particulars and shall be accompanied by the instrument of transfer of the securities to which it relates, the documentary evidence, if any, furnished to the company along with the instrument of transfer, and evidence of such other nature and such fees as may be prescribed.

(6) On receipt of a reference under sub-section (4), the Company Law Board shall, after causing reasonable notice to be given to the company and also to the transferor and the transferee concerned and giving them a reasonable opportunity to make their representations, if any, in writing by order direct either that the transfer shall be registered by the company or that it need not be registered by it.

(7) Where on a reference under sub-section (4) the Company Law Board directs that the transfer of the securities to which it relates—

(a) shall be registered by the company, the company will give effect to the direction within ten days of the receipt of the order as if it were an

order made on appeal by the Company Law Board in exercise of the powers under section 111 of the Companies Act, 1956; 1 of 1956.

(*b*) need not be registered by the company, the company shall, within ten days from the date of such direction, intimate the transferor and the transferee accordingly.

(8) If default is made in complying with the provisions of this section, the company and every officer of the company who is in default shall be punishable with fine which may extent to five thousand rupees.

(9) If in any reference made under clause (*c*) of sub-section (*4*), of this section, any person makes any statement—

(*a*) which is false in any material particular knowing it to be false; or

(*b*) which omits any material fact knowing it to be material, he shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

(10) For the removal of doubts, it is hereby provided that nothing in this section shall apply in relation to any securities the instrument of transfer in respect whereof has been lodged with the company before the commencement of the Securities Contracts (Regulation) Amendment Act 1985.'.

Amendment of section 24.

3. In section 24 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:—

"(3) The provisions of this section shall be in addition to, and not in derogation of, the provisions of section 22A.".

Amendment of section 30.

4. In section 30 of the principal Act, in sub-section (2),—

(*a*) in clause (*h*), the word "and" occurring at the end shall be omitted;

(*b*) after clause (*h*), the following clause shall be inserted, namely:—

"(*ha*) the form in which a notice referred to in sub-clause (*b*) of sub-section (4) of section 22A shall be, the particulars which such notice shall contain, the form in which a reference under clause (c) of the said sub-section (4) shall be, the particulars which such reference shall contain, and the evidence and the fees which shall accompany such reference; and".

STATEMENT OF OBJECTS AND REASONS

At present, sections 82 and 111 of the Companies Act, 1956 permit Board of Directors of companies to assume powers under the Articles of Association to refuse registration of transfer of securities without assigning any reason. Though there is a provision for appeal against such a refusal to the Company Law Board, it places an undue burden on an aggrieved person who often happens to be a small investor. The present position is also not conducive to the free marketability of listed securities and healthy growth of the capital market. Unrestricted transferability is particularly necessary for securities of public limited companies which are listed on the Stock Exchanges.

2. It was in the above context that it was announced in the Budget Speech dated 16th March, 1985 that Securities Contracts (Regulation) Act, 1956 would be amended to ensure free transferability of securities of public limited companies whose securities are listed on the Stock Exchanges. For this purpose, it is proposed to incorporate a new section, namely, section 22A, in the Securities Contracts (Regulation) Act, 1956 and also make necessary consequential amendments in the Act, to provide for free transferability of listed securities with adequate safeguards against undesirable take-over bids or destabilisation of management. Under the proposed provision, companies would be entitled to refuse registration of transfer in certain circumstances only, such as that the instrument of transfer is not proper or has not been duly stamped and executed or that the transfer is in contravention of any law or is likely to result in change in the composition of the Board of Directors in such a way that it would be prejudicial to the interests of companies or to public interest. In case a company wishes to refuse transfer of securities on the ground that any requirement under law has not been complied with it has to notify the transferor and the transferee of the same within two months from the lodgment of the instrument of transfer. In other cases the company will have to make a reference to the Company Law Board and act according to the directions of the Board.

3. The Bill seeks to achieve the above objective.

NEW DELHI; VISHWANATH PRATAP SINGH.

The 15th May, 1985.

FINANCIAL MEMORANDUM

The Bill seeks to make provision for reference to be made to the Company Law Board by companies before refusing, on any of the grounds mentioned in the Bill, to register transfer of securities in the name of the transferee. The Bill also confers powers on the Company Law Board to treat such a reference as appeal under section 111 of the Companies Act, 1956. According to the provisions of the Bill, the Company Law Board is required to give notice to the company, the transferor and the transferee of securities for a hearing and to issue directions allowing or not allowing the refusal to the registration of transfer. These provisions in the Bill would increase the workload of the Company Law Board acting in a quasi-judicial capacity. Keeping in view the minimum requirements of personnel to implement the provisions of the Bill, the financial commitment by way of recurring and non-recurring expenditure from the Consolidated Fund of India is estimated to be of the order of Rs. 3.5 lakhs as given below:—

(i) Recurring expenditure on account of pay and allowances of staff and officers	Rs. 2,80,000
(ii) Non-recurring expenditure on account of additional office accommodation and furniture required for the officers and staff	Rs. 70,000
	Rs. 3,50,000

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 4 of the Bill seeks to insert a new clause in sub-section (2) of section 30 of the Act enabling the Central Government to make rules providing for the form in which a notice referred to in sub-clause (b) of sub-section (4) of section 22A shall be, the particulars which such notice shall contain, the form in which a reference under clause (c) of the said sub-section (4) shall be, the particulars which such reference shall contain, and the evidence and the fees which shall accompany such reference.

2. The matters in respect of which the Central Government has been empowered to make rules relate to matters of procedural detail. The delegation of legislative power is, therefore, of a normal character.

SUBHASH C. KASHYAP,
Secretary-General

PRINTED BY THE GENERAL MANAGER, GOVERNMENT OF INDIA PRESS, MINTO ROAD, NEW DELHI AND PUBLISHED BY THE CONTROLLER OF PUBLICATIONS, DELHI, 1985